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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,929	07/05/2001	Yoshiko Tamaki	ASAM.0011	1831
38327                      7590                      08/04/2009				
Juan Carlos A. Marquez c/o Stites & Harbison PLLC 1199 North Fairfax Street Suite 900 Alexandria, VA 22314-1437				
EXAMINER				
DOAN, DUYN MY				
ART UNIT		PAPER NUMBER		
2452				
MAIL DATE		DELIVERY MODE		
08/04/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/897,929

**Applicant(s)**

TAMAKI ET AL.

**Examiner**

DUYEN DOAN

**Art Unit**

2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/8/2008 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 29-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldszmidt et al (us pat 7,054,943) (hereinafter Gold) in view of Brichta (us pat

5,864,483) (hereinafter Bri) and further in view of Chen et al (us pat 5,812,780) (hereinafter Chen).

As regarding claim 29, Gold discloses service level condition including at least an upper limit number and a lower limit number of the computers to be allocated to the user (col.3, lines 1-13, minimum and maximum number of servers to be allocated to the user), and a throughput ratio of an output transaction to an input transaction as a threshold level of a load condition of computers allocated to the user (see col.3, lines 30-45, keep the server resource utilization between 50 to 80 percent);

allocating an initial number of computers to the user and starting processing of requests from the user with the allocated computers (see col.3, lines 22-28 allocate server resource to user); monitoring said throughput ratio of an output transaction to an input transaction of the computers currently allocated to the user to compare with the threshold level of a load condition (col.3, lines 30-45, allocate/allocate servers base on the resource utilization range); and

if a monitored throughput ratio indicates that the computers currently allocated to the user are overloaded, the number of the computers currently allocated to the user is smaller than the upper limit number, and there is at least one idle computer in the computer system, allocating at least one of said at least one idle computer to the user (col.3, lines 30-45; lines 60-67, allocate additional servers to the customer if the utilization below the lower bound when free resources are available).

Gold does not specifically disclose urging user to input the service level condition.

Bri teaches urging user to input the service level condition (see Bri col.8, lines 26-28, prompting the user to enter the level of service criteria information).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Bri to the method of Gold to including urging the user to input the service level condition for the purpose of guarantee the quality of the service base on the inputted criteria.

The combination of Gold-Bri does not specifically teach average transaction processing latency.

Chen teaches the average transaction processing latency (see Chen col.16, lines 43-50, the average response time use as a threshold level to determine if more servers will be added or freeing up existing resources).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Chen to the invention of Gold-Bri because they're analogous art. One person with ordinary skill in the art would have been motivated to include the average response time of Chen to invention of Gold-Bri for the purpose of efficiently and effectively allocate the right amount of resources to satisfy the client's desire level of service.

As regarding claim 30, Gold-Bri-Chen discloses if the numbers of the computers currently allocated to the user is larger than the lower limit number, and one of the monitored throughput ratio and the monitored average transaction process latency indicates that the load condition of the computers currently allocated is under a level at

which a reduced number of computers can afford to share a current load, dedicating at least one of the allocated computers to be idle (see Gold col.3, lines 38-41, lines 60-67, allocate/de-allocate some servers).

### ***Conclusion***

Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUYEN DOAN whose telephone number is (571)272-4226. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571 272 3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DUYEN DOAN/  
Examiner, Art Unit 2452